IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2611 OF 2001
IN
SUIT NO.3752 OF 2001

Phonographic Performance Ltd. Plaintiff

versus

Millenium Mumbai Broadcasting
Pvt.Ltd. and others Defendants

Mr.Parekh for plaintiff
Mr.Rais for defendants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th June 2005

PC :

1. This is a notice of motion in a suit instituted by a society which claims to be having exclusive ownership in sound recordings made by their members and more particularly mentioned in Exhibit-B to the plaint. It is prayed that first defendant and all entities mentioned in Exhibit A-1 are not entitled to broadcast the sound recordings in Frequency Modulation Broadcasting Stations (F.M.) without obtaining licences from the plaintiffs. In pursuance of this declaration and other reliefs the present notice of motion has been taken out. Prayer clause (a) of the

present notice of motion reads thus :-

"(a) that pending the hearing and final disposal of the suit, the 1st Defendants and all entities mentioned in Exhibit A-1 annexed to the Plaint, by themselves, their servants and agents or otherwise howsoever be restrained by a temporary order and injunction from in any manner directly or indirectly infringing the Plaintiffs' copyright in the broadcasting rights of the Sound Recordings made by the Plaintiffs' Members as mentioned in Exhibit "B" annexed to the plaint or broadcasting any of the said Sound Recordings in any manner whatsoever anywhere or otherwise by doing any other acts which will constitute infringement of the Plaintiffs' copyright therein without first obtaining the express written, license and/or permission of the Plaintiffs."

This matter was placed before a learned Single Judge (D.K.Deshmukh, J.) on 30th October 2001 and the learned Judge recorded a statement of the advocate appearing for defendant no.1 that without seeking leave of the Court or without obtaining licence from the plaintiffs, whichever is earlier, defendant no.1 shall not broadcast the sound recordings made by the plaintiffs members as mentioned in Exhibit-B annexed to the plaint. Accepting this statement the learned Judge did not grant any ad-interim order. Thereafter, leave was sought from this Court under Order I, Rule 8 of CPC and upon publication of notice the matter was once again moved before another learned Single Judge of this Court. It

was pointed out to the learned Single Judge (Dr.Smt.Upasani, J. as her Ladyship then was) that no reply has been filed by the first defendant. The learned Judge, therefore, granted injunction in terms of prayer clause (a) of the notice of motion.

2. At the hearing of this notice of motion Mr.Rais appearing for M/s.Radio Today, Delhi Broadcasting Limited, one of the parties to whom notice was issued, after seeking leave under Order VIII, Rule 1 of CPC, invites my attention to an affidavit of the authorised signatory affirmed on 5th February 2004. He points out that M/s.Radio Today (respondents) tried to obtain express written licence of the plaintiff before commencement of the broadcast. However, plaintiff made exorbitant demands for granting permission/licence to broadcast the sound recordings. Respondents thereafter filed an application before Copy Right Board on 21st April 2002 u/s 31(1)(b) of Copy Right Act and sought compulsory licence. The respondents were informed that the Copy Right Board was not functioning at the relevant time and therefore, Writ of Mandamus was sought from the Hon’ble Culcutta High Court by the respondents by

instituting a petition under Article 226 of Constitution of India.

3. Learned Single Judge of the Culcutta High Court passed an order on 25th April 2002 which came to be challenged in appeal before a Division Bench. The Division Bench while disposing off the appeal, directed that pending proceedings before the Copy Right Board shall be taken up and Board shall endeavour to dispose off the same expeditiously. The Division Bench also directed that the petitioner (respondent M/s.Radio Today) shall deposit an advance amount of Rs.2,75,000/- per Station calculated @ Rs.400/- per needle hour which would be adjusted in each and every month. The Division Bench having directed the Copy Right Board to take up the matter expeditiously, it was expected that the Copy Right Board would pronounce its final orders. However, Mr.Rais contends that the Copy Right Board is seized of the matter and the application made by respondent for issuance of compulsory licence is still pending. This fact is not disputed by Mr.Parekh appearing for plaintiff.

4. It is, therefore, clarified that the order passed by this Court on 8th February 2002 in

notice of motion shall continue till the hearing and final disposal of the suit. Needless to state that parties namely respondent and the present plaintiff are also bound by the orders and directions of the Calcutta High Court in the writ petition/appeal. Parties shall also abide by the final orders of the Copy Right Board subject of course to their right to challenge the same in appropriate proceedings. Notice of Motion disposed off.

(S.C.DHARMADHIKARI, J.)